

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

CITY OF ST. FRANCIS

Requesting a Determination with
Respect to a Dispute Existing
Between Said Petitioner and

DRIVERS, SALESMEN, WAREHOUSEMEN,
MILK PROCESSORS, CANNERY, DAIRY
EMPLOYEES AND HELPERS UNION LOCAL
NO. 695, affiliated with the
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

Case XIX
No. 18488 DR(M)-59
Decision No. 13177-A

As to Whether Sergeants in the Employ
of Said Municipal Employer should or
should not be Included in a Collective
Bargaining Unit Consisting of Non-
Supervisory Law Enforcement Employees

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Thomas J. Kennedy, appearing on behalf of Local No. 695.
Mr. Harwood Staats, City Attorney, appearing on behalf of the Petitioner.

ORDER CLARIFYING BARGAINING UNIT

The City of St. Francis having petitioned the Wisconsin Employment Relations Commission to issue a Declaratory Ruling to determine whether Sergeants in the employ of the Police Department of the City of St. Francis, Wisconsin, should be included in, or excluded from, a bargaining unit consisting of law enforcement personnel represented by Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; and hearing having been held in the matter on December 13, 1974, Herman Torosian, Hearing Officer, 1/ being present; and the Commission having, in accordance with its present practice, considered that such petition should have been properly a petition for unit clarification; and the Commission having reviewed the evidence and arguments of the parties and being fully advised in the premises, and further being satisfied that the Sergeants in the employ of the Police Department of the City of St. Francis, Wisconsin, are not supervisors within the meaning of Section 111.70(1)(o)1 of the Municipal Employment Relations Act;

NOW, THEREFORE, it is

ORDERED

That Sergeants in the employ of the Police Department of the City of St. Francis, Wisconsin are properly included in the collective

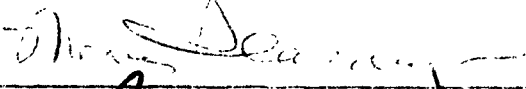
1/ Mr. Torosian became a member of the Commission on January 4, 1975.

bargaining unit consisting of all law enforcement personnel in the employ of the Police Department of the City of St. Francis, but excluding the Chief.

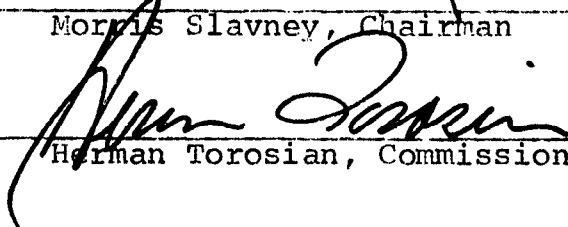
Given under our hands and seal at the City of Madison, Wisconsin this 30th day of April, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING
ORDER CLARIFYING BARGAINING UNIT

The Union is, and has been for several years, the recognized bargaining representative of all commissioned law enforcement personnel employed by the Municipal Employer except the Chief. The rank of Sergeant has been covered by all prior collective bargaining agreements negotiated pursuant to such recognition. On November 8, 1974, the Municipal Employer petitioned the Commission to issue a Declaratory Ruling excluding Sergeants from the bargaining unit, or to otherwise order the Union to separate and terminate the membership, representation and affiliation of Sergeants from the Union, on the claim that Sergeants are supervisors within the meaning of Section 111.70(1)(o)1 2/ of the Municipal Employment Relations Act (MERA) and, as supervisors, Sergeants may not be members of the Union, pursuant to Section 111.70(3)(a)2. 3/ In accordance with current practice the Commission has deemed the petition for Declaratory Ruling as a petition to clarify the bargaining unit.

The Municipal Employer contends that Sergeants are in charge of the operational requirements of their respective shifts, and therefore are responsible for the discipline of Patrolmen working said shifts; the assignment of responsibilities to the Patrolmen, the control of the shift's operations and the adjustment of grievances. The Municipal Employer does not claim that Sergeants have the power to hire, transfer (between shifts), suspend (except in emergencies), layoff, recall, promote or discharge Patrolmen. Such powers are vested in the Chief, or the Fire and Police Commission.

The Union contends that the duties of the Sergeants are not sufficiently supervisory in nature that they should be excluded from the bargaining unit. The Union claims that the duties, relied on by the Municipal Employer as being supervisory, are in practice either routine or clerical in nature, or do not involve the exercise of authority.

The Commission recognizes that a police department is organized in a way which necessarily encompasses a chain of command, where every officer is subordinate to those officers having a higher rank. In determining whether an employe, in such a situation, is a supervisor, the Commission has held that mere rank over one or more employes is not

2/ Section 111.70(1)(o)1:

"(o) 'Supervisor' means:

1. As to other than municipal and county firefighters, any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employes, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

3/ Section 111.70(3)(a)2:

". . . After January 1, 1974, . . . supervisors shall not remain members of such [labor] organization."

sufficient to establish supervisory status, but rather the amount of supervisory authority that is actually exercised is determinative of the issues. 4/

On the basis of the evidence presented, the Commission concludes that Sergeants often perform work comparable to that performed by "working foremen". However, the Commission concludes that Sergeants are not vested with sufficient supervisory authority to require their exclusion from the bargaining unit. Their power to discipline is limited, in practice, to explaining the rules of the department and mediating conflicts that arise under those rules as well as occasionally filing reports with the Chief if there is a substantial breach of discipline. The assignment of duties to Patrolmen is limited to desk duty or patrol duty and is normally handled on a consensual arrangement between the Sergeant and Patrolmen involved. While the Sergeants theoretically act as the first step in the grievance procedure, in practice their function is merely to relay the grievance to the Chief. The great majority of a Sergeant's time is spent on patrol work and is of the same nature of work as performed by the Patrolmen. In dealing with Patrolmen, Sergeants exercise independent judgment to the same extent that any experienced Patrolman would, and his experience provides the basis for that exercise of independent judgment, rather than his rank. Sergeants do not evaluate the work of patrolmen on a regular and formal basis.

For the above and foregoing reasons, the Commission concludes that Sergeants are not supervisors within the meaning of the Act and, therefore, are included in the unit represented by the Union.

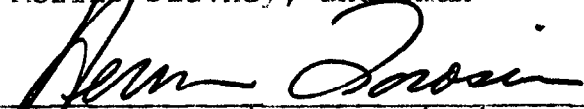
Dated at Madison, Wisconsin this 30th day of April, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



German Torosian, Commissioner

4/ City of Madison (11087-A) 12/72.